

SHD Paraphrased Regulations - Food Stamps

200 Hearing-Procedures

200-1

Persons wishing to file a complaint may file a complaint with the county or may contact the California Department of Social Services in writing or by calling toll free 1-800-952-5253. They may also file a complaint by contacting the welfare department in the county in which they reside. The complaint shall be handled in accordance with Division 22-100. (§63-106.1)

200-2

State law provides that eligibility of all FS households shall be determined in accordance with federal law. (W&IC §18901)

200-3

State hearings under the FS Program shall be conducted in accordance with the provisions of Division 22. (§63-804.1)

200-4

In the FS Program, all state hearings shall be decided or dismissed and the claimant and the county notified of the decision within 60 days from the date of the request for a state hearing except when the claimant waives such requirement, or withdraws or abandons the request for hearing. (§22-060.11)

200-5

For purposes of this decision, W&IC is the abbreviation for the Welfare & Institutions Code.

200-6

Federal regulations deal with the FS household's rights during the hearing. These rights include, but are not limited to the following:

The household or its representative must be given adequate opportunity "to examine all documents and records to be used at the hearing at a reasonable time before the hearing as well as during the hearing. The contents of the case file including the application form and documents of verification used by the state agency to establish the household's ineligibility or eligibility and allotment shall be made available", although certain confidential information is protected from release. The agency shall provide free copies of relevant portions of the case file on request. "Confidential information that is protected from release and other documents or records which the household will not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearing official's decisions." [Emphasis added]

(7 Code of Federal Regulations §273.15(p)(1))

200-7

In the FS program, decisions of the hearing authority shall comply with Federal law and regulations and shall be based on the hearing record. (7 Code of Federal Regulations (CFR) §273.15(q)(1))

"A decision by the hearing authority shall be binding on the State agency and shall summarize the facts of the case, specify the reasons for the decision, and identify the

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supporting evidence and the pertinent Federal regulations." (7 CFR §273.15(q)(2))

201-1

If a household believes that it is entitled to restoration of lost benefits but the county does not agree, the household has 90 days from the date of the county determination to request a state hearing. The county shall restore lost benefits to the household only if the state hearing decision is favorable to the household. Benefits lost more than 12 months prior to the date the county was initially informed of the household's possible entitlement to lost benefits shall not be restored. (§63-802.42)

201-2

A household shall be allowed to request a hearing on any action by the county or loss of benefits which occurred within the prior 90 days. In addition, at any time within a certification period, a household may request a state hearing to dispute its current level of benefits. (§63-804.5) If a household believes that it is entitled to restoration of lost benefits but the county does not agree, the household has 90 days from the date of the county determination to request a state hearing. (§63-802.42)

201-3

Federal regulations provide that a household shall be allowed to request a hearing on any action by the state agency or loss of benefits which occurred in the prior 90 days. Action by the state agency shall include a denial of a request for restoration of any benefits lost more than 90 days but less than a year prior to the request. In addition, at any time within a certification period a household may request a fair hearing to dispute its current level of benefits. (7 Code of Federal Regulations (CFR) §273.15(g))

201-4

An FS notice shall be considered adequate if it explains in easily understandable language the proposed action, the reason for the proposed action, the household's right to request a state hearing, the availability of continued benefits, and the potential liability of the household for any overissuance received while awaiting a state hearing, if the hearing decision is adverse to the household. The notice must also contain the telephone number that an individual may contact for additional information. For households living outside the local calling area, the notice shall contain a toll-free number or a number where collect calls will be accepted. An adequate notice must also advise the household of the availability of free legal representation, if any. (§63-504.211)

201-5

A request for state hearing must be filed within 90 days of the action or inaction with which the claimant is dissatisfied. In the Food Stamp Program, the appropriate time limits are set forth in §§63-802.4 and 63-804.5. If the claimant received adequate notice of the action, the date of the action is the date the notice was mailed to the claimant. (§22-009.1)

201-8 REVISED 8/04

The Notice of Action sent when the household fails to file a CA 7/QR 7 by the 11th of the report/submit month or files an incomplete CA 7/QR 7 shall include:

- (a) That the CA 7/QR 7 is overdue or incomplete.

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- (b) What the household must do to complete the CA 7/QR 7.
- (c) What verification is missing and the effect on the household's benefit level.
- (d) That the SSN of a new member must be reported.
- (e) The extended filing date.
- (f) That the county will assist the household in completing the report.

(§63-504.271 prior to the implementation of QR/PB; §63-508.61 effective July 1, 2004)

201-9

When the county has determined that a work registrant has voluntarily quit a job without good cause, it shall notify the household of the proposed disqualification within 10 days of that determination. In addition to the requirements of §63-504.21, the notice shall:

1. Explain the reason for the proposed disqualification.
2. Specify that the sanction period shall begin the first of the month following the month the registrant is provided timely notice and shall continue for the period mandated by §63-407.53.
3. Explain the actions which may be taken to end the disqualification and the conditions under which the registrant may reapply.
4. Inform the registrant of the right to request a state hearing; that continued participation shall be in accord with §63-804.6; and inform the registrant that if benefits are continued pending the hearing, and the county determination is upheld, the disqualification period begins the first of the month after the hearing decision is rendered.

(§63-408.21)

201-10

The Notice of Action approving benefits shall advise the household of the amount of the allotment, the beginning and ending dates of the certification period and any anticipated variations in the benefit level based on changes anticipated at the time of certification.

(§63-504.221)

201-11

The Notice of Action which informs the household of the expiration or shortening of the certification period shall advise the household of the following:

- (a) The date the certification period ends.
- (b) The date the household must file an application for recertification to receive uninterrupted benefits.

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- (c) That the household must appear for an interview scheduled on or after the application is timely filed in order to receive uninterrupted benefits.
- (d) That the household is responsible for rescheduling any missed interview.
- (e) That the household must complete the interview and provide all required verification to receive uninterrupted benefits.
- (f) The number of days the household has for submitting missing verification if the household is informed at the interview of any further verification needed to receive uninterrupted benefits.
- (g) The household's right to request and submit an application as long as it is signed and dated.
- (h) The address of the office where the application must be filed.
- (i) The consequences of failure to comply with the notice of expiration.
- (j) The household's right to file the application by mail or through an authorized representative.
- (k) The household's right to request a state hearing.

(§63-504.253)

201-12

Counties shall initiate collection action by providing the FS household or the sponsor of an alien household an initial notice of action to begin collection action and requesting repayment. The due date or time frame for repayment must be no later than 30 days after the date of the initial notice of action, and shall provide the following information:

- (a) The amount owed, the type (IPV, IHE, or AE) and reason for the claim, the period of time the claim covers, how the claim was calculated, any offsetting that was done to reduce the claim, how the household or its sponsor may pay the claim, the household's or the sponsor's right to a state hearing if the household or the sponsor disagrees with the amount of the claim, and that the household has 90 days to request a state hearing.
- (b) If the household already has had a state hearing on the amount of the claim as a result of consolidation of the administrative disqualification hearing with the state hearing, the household shall be advised that it has no right to another state hearing on the amount of the claim.
- (c) If there is an individual or organization that will provide free legal representation, the household shall be advised of the availability of these services.
- (d) The household, or the sponsor shall be informed of the length of time the household has to decide which method of repayment it will choose and inform

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the county of its decision, and of the fact that the household's allotment will be reduced if the household fails to agree to make restitution.

- (e) (Reserved)
- (f) Claim collection will be from all adults who were in the household when the overissuance occurred.
- (g) The household has the opportunity to inspect and copy any records related to the claim.
- (h) If the claim is not paid, it may be sent to other collection agencies that may use various methods to collect the claim.
- (i) If not paid, the claim will be referred to the federal government for collection. However, the household may make a written agreement to pay the claim amount prior to referral for Federal action.
- (j) If the claim is not received by the due date and becomes delinquent, the household may be subject to additional processing charges and will be subject to involuntary collection action(s).
- (k) A due date or time frame to repay or make arrangements to repay the claim, unless the CWD will impose an allotment reduction. (If allotment reduction is to be imposed, the percentage to be used and effective date must be stated.)
- (l) Any household or sponsor against which the county has initiated collection action shall be informed of the right to request renegotiation of any repayment schedule to which the household or the sponsor has agreed if economic circumstances change.
 - (1) A change in economic circumstances includes, but is not limited to, changes in income, resources, or expenses. A change in household allotment shall not constitute a change in economic circumstances.

(§63-801.431, as revised effective August 10, 2001)

201-12A

Prior to August 10, 2001, the following notice requirements existed:

The county shall initiate collection action by providing the household or the sponsor of an alien household with a Notice of Action requesting repayment which includes the following information:

- (a) The amount owed, the reason for the claim, the period of time the claim covers, any offsetting that was done to reduce the claim, how the household or its sponsor may pay the claim, and the household's or sponsor's right to a state hearing.

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- (b) If the household already has had a state hearing on the amount of the claim as a result of consolidation of the ADH and state hearing, that the household has no right to another state hearing on the amount of the claim.
- (c) If free legal representation is available, the fact that it is available. Under federal regulations, the notice must also advise the household of any individual or organization which provides this free representation.
- (d) For inadvertent household error and IPV claims, the length of time the household or sponsor has to decide which method of repayment it will choose and inform the county of its decision, and the fact that the household's allotment will be reduced if there is a failure to agree to make restitution.
- (e) For administrative error claims, the availability of allotment reduction as a method of repayment if the household prefers this method.
- (f) The right to request renegotiation of any repayment schedule should economic circumstances change.

(§63-801.431, revised effective August 10, 2001; 7 Code of Federal Regulations §273.18(d)(3)(ii))

201-12B ADDED 5/05

Question: MPP §63-801.431(a) indicates that the initial notice of action for establishing an overissuance should include "how the claim was calculated". Does this mean the county should include the actual calculation?

Answer: Yes. MPP §63-801.431(a) requires that the initial demand letter or notice of adverse action contain information on how the claim was calculated. The purpose of this notice is to provide the household with sufficient information to make an informed decision about the correctness of the overissuance. At a minimum, the demand letter or notice of action must include the pertinent information that was used to determine the claim amount for each month of the overissuance. Depending on the reasons for the overissuance, this information could include such items as the amount of income used, the earned income deduction allowed or the number of members in the household.

This information may be conveyed in the body of the letter or in an attachment. The attachment could be a copy of the DFA 842 attached to the DFA 377.7B notice of action or some other format which fulfills the information requirements.

An example of the minimum information needed includes a statement of each month of alleged overissuance, the allotment received in each month, the allotment authorized in each month, the amount of overissuance in each month, the amount of expunged benefits in each month and the total amount of the overissuance claim.

(All County Information Notice I-16-05, p.13 April 4, 2005)

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201-14

Effective January 1, 1990, all CalWORKs (formerly AFDC) notices of action concerning overpayments, or FS notices of action concerning overissuances, must include substantially the following language:

WARNING: If you think this overpayment is wrong, this is your last chance to ask for a hearing. The back of this page tells how. If you stay on aid, the county can collect an AFDC overpayment by lowering your monthly grant. It can lower your food stamps to collect an overissuance unless it was the county's fault. If you go off aid before the overpayment or overissuance is paid back, the county may take what you owe out of your state income tax refund. (*Anderson v. McMahon*, Alameda County Superior Court, Case No. 620039-4; All-County Letter No. 90-14, February 9, 1990)

201-15

States must include the following information in the initial FS overissuance demand letter or notice of adverse action:

- (A) The amount of the claim.
- (B) The intent to collect from all adults in the household when the overpayment occurred.
- (C) The type (IPV, IHE, AE or similar language) and reason for the claim.
- (D) The time period associated with the claim.
- (E) How the claim was calculated.
- (F) The phone number to call for more information about the claim.
- (G) That, if the claim is not paid, it will be sent to other collection agencies, who will use various collection methods to collect the claim.
- (H) The opportunity to inspect and copy records related to the claim.
- (I) Unless the amount of the claim was established at a hearing, the opportunity for a fair hearing on the decision related to the claim. The household will have 90 days to request a fair hearing.
- (J) That, if not paid, the claim will be referred to the Federal government for federal collection action.
- (K) That the household can make a written agreement to repay the amount of the claim prior to it being referred for Federal collection action.
- (L) That, if the claim becomes delinquent, the household may be subject to additional processing charges.

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- (M) That the State agency may reduce any part of the claim if the agency believes that the household is not able to repay the claim.
- (N) A due date or time frame to either repay or make arrangements to repay the claim, unless the State agency is to impose allotment reduction.
- (O) If allotment reduction is to be imposed, the percentage to be used and the effective date.

(7 Code of Federal Regulations (CFR) §273.18(e)(3)(iv), as revised effective August 1, 2000)

203-1

When a fair hearing decision regarding an alleged FS overissuance is going to be issued, federal regulations require the following:

- (i) A claim awaiting a fair hearing decision must not be considered delinquent.
- (ii) If the hearing official determines that a claim does, in fact, exist against the household, the household must be re-notified of the claim. The language to be used in this notice is left up to the State agency. The demand for payment may be combined with the notice of the hearing decision. Delinquency must be based on the due date of this subsequent notice and not on the initial pre-hearing demand letter sent to the household.
- (iii) If the hearing official determines that a claim does not exist, the claim is disposed of in accordance with 7 Code of Federal Regulations (CFR) §273.18(e)(8).

(7 CFR §273.18(e)(6))

209-4

The Sacramento County Superior Court ordered the CDSS to apply the doctrine of equitable estoppel, as warranted, when FS recipients had been overissued benefits due to administrative error, and the county attempted to collect the overissuance. The Court denied CDSS' claims that application of the doctrine of equitable estoppel was inappropriate because FS is a wholly federally funded program, and because *Office of Personnel Management v. Richmond* (1990) 496 U.S. 414, precluded the relief sought. The CDSS appealed this determination. (*Vang v. Healy*, Sacramento County Superior Court, No. 370072, Memorandum and Order, April 5, 1993)

This Superior Court determination was reversed in an unpublished decision by the Court of Appeals. (*Vang v. Saenz*, No. C016270, March 20, 2002)

209-5

When the county has computed a CalWORKs (formerly AFDC) administrative error overpayment, the Judge may consider the amount of FS benefits the claimant would have received if the county had issued the correct CalWORKs payment rather than the overpaid CalWORKs. If this computation results in a larger FS allotment than the claimant actually received, the Judge may instruct the county to reduce the CalWORKs overpayment by the amount of the increased FS allotment.

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Under equitable estoppel, the lost FS benefits are a measure of the injury which the claimant suffered due to the county error.

(All-County Information Notice I-60-96, November 26, 1996)

209-11

In an unpublished opinion by the Court of Appeals (*Vang v. Saenz*) the Court denied petitioner's claim that equitable estoppel should be applied to preclude the county from recovering FS overissuances which were caused by administrative error. The Appeals Court relied primarily on the U.S. Supreme Court's analysis in *OPM v. Richmond*.

In the *OPM* case, the Supreme Court concluded that equitable estoppel cannot be applied against the government where to do so would result in the payment of benefits not authorized by Congress.

The Supreme Court stated in *OPM* as follows:

"Whether there are any extreme circumstances that might support estoppel in a case not involving payment from the Treasury is a matter we need not address. As for monetary claims, it is enough to say that this Court has never upheld an assertion of estoppel against the Government by a claimant seeking public funds. In this context there can be no estoppel, for courts cannot estop the constitution."

(*OPM v. Richmond* (1990) 496 U.S. 414, 434)